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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox

Addendum

Mission to Costa Rica*,**

Summary

In the present report, submitted pursuant to Human Rights Council resolution 19/10, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment gives his findings and makes recommendations on the basis of his visit to the Republic of Costa Rica from 28 July to 1 August 2013. During the visit, he examined how the country was implementing human rights related to environmental protection, identified good practices and lessons learned, and considered the challenges the country faces in the implementation of environmentally related human rights.

* Late submission.

** The summary of the present report is circulated in all the official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Spanish only.

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Annex

[English and Spanish only]

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Costa Rica (28 July–1 August 2013)

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I. Introduction

1. At the invitation of the Government, the Independent Expert visited Costa Rica from 28 July to 1 August 2013. The purpose of the visit was to examine how Costa Rica was implementing human rights related to environmental protection, to identify good practices and lessons learned, and to consider the challenges the country faces in the implementation of environmentally related human rights.

2. The Independent Expert wishes to express his gratitude to the Government for its invitation and to express particular appreciation for the cooperation of the officials at the Ministry of Foreign Affairs before and during the visit. He also expresses his gratitude for the support given by the United Nations Resident Coordinator and the country team, especially the United Nations Development Programme (UNDP) in Costa Rica.

3. During his visit, the Independent Expert met with the Vice-President of the Republic, Mr. Alfio Piva; the Minister for Foreign Affairs, Mr. José Enrique Castillo Barrantes; Judge Gilbert Armijo, the President of the Constitutional Chamber of the Supreme Court; the Ombudsperson (Defensora de los Habitantes de la Republica), Ms. Ofelia Taitelbaum Yoselewich; the Director of the State of the Nation Report, Mr. Jorge Vargas Cullell; the Vice-Minister of Waters and Oceans, Mr. José Lino Chaves; and senior officials from other government agencies, including the Ministry of Foreign Affairs, the Ministry of the Environment and Energy, the National System of Conservation Areas, the Electricity Institute and the Tourism Board. He met with a range of representatives of civil society, including academics and representatives of non-profit groups, as well as with residents of Bijagual, a town near the Pacific coast. He thanks all those who met with him, gave their time and cooperated with him during the visit.

II. Legal and institutional frameworks

A. Legal framework

1. International law

4. Costa Rica is party to eight core international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The country has thus undertaken obligations to protect a wide spectrum of human rights related to environmental protection.

5. At the regional level, Costa Rica is a member State of the Organization of American States, which adopted the 1948 American Declaration of the Rights and Duties of Man. Costa Rica has ratified the American Convention on Human Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador). Article 11 of the Protocol recognizes the human right "to live in a healthy environment" and a duty on States to "promote the protection, preservation, and improvement of the environment". The Inter-American Commission on Human Rights (IACHR) has also stated that:

> Although neither the American Declaration of the Rights and Duties of Man nor the American Convention on Human Rights includes any express reference to the protection of the environment, it is clear that several fundamental rights enshrined therein require, as a precondition for their proper exercise, a minimal environmental

quality, and suffer a profound detrimental impact from the degradation of the natural resource base.[1]

Similarly, the Inter-American Court of Human Rights has recognized the "undeniable link between the protection of the environment and the enjoyment of other human rights".[2]

6. Costa Rica has ratified a number of international environmental agreements, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Stockholm Convention on Persistent Organic Pollutants and the Convention on Biological Diversity.

7. Costa Rica is also party to several International Labour Organization conventions, including Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

8. According to article 7 of the Costa Rican Constitution, international treaties duly approved by the Legislative Assembly take precedence over domestic legislation. The Constitutional Chamber (Sala Constitucional) of the Supreme Court has held that international human rights treaties in force in Costa Rica "not only have similar status to the Constitution but also, insofar as they grant greater rights or guarantees to persons, take precedence over the Constitution".[3] Under the Constitutional Jurisdiction Act establishing the Constitutional Chamber, the Chamber can apply not only the rights enshrined in the Constitution, but also those recognized under international law in force in Costa Rica.

2. Constitutional and statutory law

9. The 1949 Constitution of Costa Rica was amended in 1994 to incorporate the right to a healthy and ecologically balanced environment. The Constitution includes other provisions relevant to environmental protection, including article 21, which recognizes the right to life, and article 89, which states that the cultural aims of the country include the protection of its natural beauty. The Constitution does not explicitly incorporate rights to health, adequate food, safe drinking water or adequate housing, but those rights have been indirectly protected through an expansive interpretation of other provisions.[4]

10. The 1995 Environment Act No. 7554 provides for, inter alia, environmental impact assessment (EIA); land use planning; classification of protected areas; protection of marine and coastal resources, wetlands, biodiversity and forests; and the regulation of air and water pollution. It incorporates rights of public participation, information and remedy. For example, it provides that the State and municipalities shall encourage the active and organized participation of citizens in decision-making and actions taken to protect and improve the environment (art. 6), and requires the creation of regional environmental councils to integrate a wide range of stakeholders into the environmental decision-making process (arts. 7–9). It provides for public participation and access to information in the EIA process (arts. 22–24), and establishes mechanisms to address violations and provide remedies (arts. 102–103). It also establishes a range of protective measures and

[1] IACHR, Report No. 125/12, *Kuna indigenous people of Madungandí and Emberá indigenous people of Bayano and their members v. Panama*, Nov. 30, 2012, para. 233.

[2] IACHR, *Case of Kawas-Fernández v. Honduras*, Judgment of Apr. 3, 2009 (Merits, Reparations and Costs), para. 148.

[3] Implementation of the International Covenant on Economic, Social and Cultural Rights, fourth periodic report submitted by Costa Rica (E/C.12/CRI/4), para. 149.

[4] See, for example, decisions of the Constitutional Chamber Nos. 4654-03; 1923-04; 5732-04; 7953-06; and 7983-06. All decisions of the Constitutional Chamber are available from http://sitios.poder-judicial.go.cr/salaconstitucional/.

administrative sanctions that public authorities can apply, including issuing warnings, rescinding permits, suspending activities and providing for compensation (arts. 98–99).

11. Other environmental laws include the 1996 Forestry Act No. 7575, which generally applies to protected areas, and the 1998 Biodiversity Act No. 7788, the objective of which is the conservation and sustainable use of biodiverse resources and the equitable distribution of their benefits (art. 1). The Biodiversity Act provides special protections for indigenous communities, including a requirement that their prior informed consent is necessary in order for others to have access to components of biodiversity resources or associated knowledge in indigenous peoples' territories (art. 65).

B. Institutional framework

12. The Ministry of the Environment and Energy (MINAE) is the main institution that oversees environmental protection in Costa Rica. The Environment Act and other environmental laws provide MINAE with various mandates, including establishing and monitoring protected areas (art. 32) and marine protection zones (art. 42), coordinating the management of biodiversity (Biodiversity Act, art. 13) and managing forest resources (Forestry Act, art. 5). MINAE includes a number of institutions, among them the National Environmental Technical Secretariat (SETENA), Regional Environmental Councils and the National System of Conservation Areas (SINAC).

13. SETENA oversees the EIA process and monitors compliance with environmental permits for approved projects (Environment Act, chap. IV, arts. 17–24). Environmental permits are subject to monitoring and evaluation during the course of the project or action (art. 20). In cases of violation, SETENA may order the suspension of the project or action and the applicant can be held liable for environmental damage (art. 20). The public can also challenge projects that violate the terms and conditions of their environmental permits, as well as any other environmental laws, before a three-person Environmental Administrative Tribunal, a functionally independent body within MINAE (arts. 103 and 111).

14. Regional Environmental Councils are decentralized authorities that facilitate public participation in environmental policy and decision-making (art. 7). SINAC, created under the 1998 Biodiversity Act, serves as a participatory system of management and institutional coordination for the forests, wildlife and protected areas of Costa Rica (art. 22), as well as the 11 regions designated as conservation areas under the Biodiversity Act. SINAC manages conservation areas primarily through the use of regional councils, which seek to promote public participation in the management of the areas (arts. 29 and 30). The Forestry Act is administered under the ambit of MINAE through various institutions, including the National Forestry Office, which proposes forest policies, and SINAC, which administers protected areas.

15. The Office of the Comptroller-General (Contraloría General de la República), an auxiliary institution of the Legislative Assembly, monitors the Public Treasury. All institutions working in the field of environmental protection are subject to its oversight (Constitution, arts. 183 and 184). Costa Rica has an active judiciary, at the apex of which is the Supreme Court of Justice. The Constitutional Chamber of the Supreme Court has the primary function of ensuring the protection of the fundamental rights embodied in the Constitution or in international human rights treaties to which Costa Rica is a party.

III. Environmental conditions in Costa Rica

16. Costa Rica ranked fifth out of 132 countries, and first among developing countries, in the 2012 Environmental Protection Index developed by Yale University, which takes into

account a broad range of environmental criteria.[5] Costa Rica has a particularly outstanding record in the early adoption and extensive implementation of a national system of protected areas, which now includes more than one quarter of all Costa Rican territory. Costa Rica has also adopted innovative policies to encourage reforestation, including the Forest Credit Certificate and the Payment for Environmental Services programme, through which private landowners have received payment for protecting forested areas. Those policies have been successful: the country has gone from about 26 per cent forest coverage in the 1980s to 52 per cent as of 2010.[6] The effective protection of natural habitat in and out of protected areas has helped to protect the country's biological diversity. Costa Rica is one of the most biodiverse countries in the world, with over 500,000 identified species that represent nearly 4 per cent of the number of species in the world. Costa Rica is a leader in other areas of environmental policy as well. For example, it has banned open-pit mining and it has announced its intention to become entirely carbon-neutral by 2021.[7]

17. Despite its well-deserved international reputation for its environmental accomplishments, Costa Rica faces challenges, including with respect to maritime protection, water pollution and reliance on fossil fuels. According to one comparative assessment of progress by States towards healthy oceans, Costa Rica ranks only 135th in the world.[8] Costa Rica has taken important steps to recognize marine protected areas, but the State of the Nation report, a respected independent evaluation described below in section IV (C), warns that robust conservation systems are still lacking in maritime areas. Costa Rica stands out in Latin America for its near-universal water supply, but measures of water quality are more troubling. As explained in section V (D) below, most Costa Ricans lack access to a sewage system, and sewage and many other pollutants are discharged directly into rivers, making them among the most polluted in Latin America. In its production of electricity, Costa Rica has an admirably high percentage of renewable energy sources, especially hydroelectric plants. But Costa Rica will still find it difficult to reach its goal of carbon-neutrality because the largest source of energy demand is the growing transportation sector, which relies almost entirely on hydrocarbons.[9]

18. In general, the State of the Nation report suggests that Costa Rica needs to improve its overall environmental management, including through greater attention to environmental issues beyond conservation policies. It urges Costa Rica to engage in greater regional planning and, in particular, more effective land use planning.[10]

IV. Good practices

19. In its resolution 19/10, the Human Rights Council requested the Independent Expert to identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, especially in the area of environmental protection. Generally, the Independent Expert prefers to use the term "good practice" to "best practice," because in many situations it is not possible to identify a single "best" approach. The term "practice" is

[5] See http://epi.yale.edu/files/2012_epi_summary_for_policymakers.pdf.

[6] *Costa Rica: Human development Assessment and Dilemmas 2012* (San José, Costa Rica), p. 51. Available from www.estadonacion.or.cr/files/biblioteca_virtual/otras_publicaciones/Costa-Rica_HDA-2012_digital.pdf.

[7] *Estado de la Nación* (Nov. 2012), chap. 4, p. 186. Available from www.estadonacion.or.cr/files/biblioteca_virtual/018/Cap-4-Armonia-con-la-Naturaleza.pdf.

[8] See www.oceanhealthindex.org/Countries/Costa_Rica/.

[9] *Estado de la Nación*, chap. 4, pp. 184–185.

[10] Ibid., p. 210.

defined broadly, to include laws, policies, case law, jurisprudential shifts, strategies, administrative practices, projects and so forth. To be a good practice, the practice should integrate human rights and environmental standards in an exemplary manner. Such integration could occur through the application of human rights norms to environmental decision-making and implementation, for example through the use of rights of access to information, participation and remedy. The integration could also occur through the use of environmental measures to define, implement and preferably exceed minimum substantive standards set by human rights norms. Either way, the practice should be exemplary from the perspective of human rights and from that of environmental protection.

20. Costa Rica has many good practices in the use of human rights obligations in environmental policymaking, and the following list is not exhaustive. The present section of the report highlights important and innovative uses of three rights: the right to a healthy and ecologically balanced environment, the right of access to legal remedies and the right to environmental information.

A. Right to a healthy and ecologically balanced environment

21. In 1994, Costa Rica amended its Constitution to state, in article 50:

> Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.

Based on his study of the growing number of constitutionally protected environmental rights in countries around the world, David Boyd has argued that such rights have several benefits. They provide unifying principles that support strong national environmental laws; they provide a legal basis for direct judicial enforcement of the rights; and they appear to be correlated with superior environmental performance overall.[11]

22. The experience of Costa Rica provides evidence of the benefits of adopting such a constitutional right. During the visit of the Independent Expert, government officials and members of civil society repeatedly emphasized that the constitutional right symbolizes the importance Costa Rica places on environmental protection in general, and on the link between environmental protection and human rights in particular. There can be no doubt that article 50 provides a strong basis for the country's environmental statutes and policies. For example, the Environment Act explicitly cites the constitutional right as one of the principles underlying that legislation (art. 2). The constitutional right has also enabled direct enforcement by the Constitutional Chamber of the Supreme Court, which has developed extensive jurisprudence applying the right to a wide range of environmental issues. The Constitutional Chamber began to adopt environmental jurisprudence even before the adoption of the explicit right to a healthy environment, by linking environmental protection to the right to life.[12] In 1994, in the *Presidente de la Sociedad Marlene SA v. Municipality of Tibás Marlene* case, the Chamber stressed that the State had a positive obligation to protect nature in order to avoid severe limitations on the right to life.[13] Indeed, that decision helped to spur the adoption of the explicit constitutional right in 1995.

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[11] David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, Toronto, UBC Press, 2012).

[12] Constitutional Chamber Decisions Nos. 3705-93 and 6240-93.

[13] Constitutional Chamber Decision No. 6918-94.

23. Since 1995, much of the case law of the Constitutional Chamber has concerned the application of article 50. According to information received from the Chamber, it has reviewed issues of constitutionality in environmental matters on 85 occasions between 1989, when the Chamber was established, and 2012 and has reached findings of unconstitutionality 36 times, or 42 per cent of the total. The largest single categories of decisions of unconstitutionality have been those involving protected areas (13 decisions)[14] and EIA procedures (5 decisions),[15] but it has reviewed a wide range of issues, including mineral concession authorizations,[16] aerial spraying,[17] toxic substances used for baking,[18] deforestation,[19] ecotourism,[20] protection of marine national parks,[21] the procedure of the Environmental Administrative Tribunal[22] and the use of pesticides.[23] To give just a few examples, it has held that article 50 has been violated by a law permitting the hunting of green turtles; by the authorization of timber harvesting in the habitat of the green macaw; by the authorization of construction in Las Baulas National Park; and by the failure of the Government to take adequate measures to protect groundwater in approving a high-density urban development.[24] As this partial list indicates, the Constitutional Chamber has defined the scope of article 50 broadly, transcending basic or primary protection of environmental components such as water to include factors relating to the economy, tourism, farming and other activities.[25] It has held that the right requires not only that the State refrain from direct violations, but also that it protect against violations from others,[26] and in this regard, it has underscored the role of the State as the guarantor for the protection and safeguarding of the environment and natural resources.[27] Although plaintiffs may not necessarily demand that the State take a particular course of action, they are entitled to insist that the State adopt measures that are suitable for the protection of the right.[28] These obligations extend to national agencies with general authority such as MINAE, to specialized agencies such as SETENA and the Tourism Board (ICT), and even to local municipalities.[29]

24. The Chamber has also derived from the right to a healthy environment a principle of *in dubio pro natura*, or a precautionary principle, by which it means that if there is a lack of certainty about whether activities might cause serious and irreparable damage, the Government should refrain from the activities.[30] The Chamber has also emphasized the importance of procedural rights in the environmental context, stating that the guarantee of a right to a healthy environment includes the design and implementation of procedural mechanisms that establish effective access to the protection of the right.[31]

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[14] See, for example, Decisions Nos. 7294-98 and 1056-09.
[15] See, for example, Decisions Nos. 6311-03 and 2019-09.
[16] Decision No. 7291-98.
[17] Decision No. 16276-06.
[18] Decision No. 17747-06.
[19] Decision No. 3923-07.
[20] Decision No. 16975-08.
[21] Decision No. 8713-08.
[22] Decision No. 5593-12.
[23] Decision No. 16937-11.
[24] Boyd, *The Environmental Rights Revolution*, pp. 136-137.
[25] Constitutional Chamber Decision No. 2541-12.
[26] Boyd, *The Environmental Rights Revolution*, p. 136.
[27] Constitutional Chamber Decision No. 14991-12.
[28] Decision No. 3291-12.
[29] Decision No. 3291-12.
[30] Constitutional Chamber Judgment No. 6922-10.
[31] Constitutional Chamber Decision No. 1739-01.

B. Right to access to remedy

25. The Universal Declaration of Human Rights recognizes that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (art. 8). Similarly, the International Covenant on Civil and Political Rights requires each of its parties to ensure that any person whose rights as recognized in the Covenant are violated "shall have an effective remedy", that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy" and that "the competent authorities shall enforce such remedies when granted" (art. 2 (3)).

26. That obligation is included in other human rights instruments, including in article 25 of the American Convention on Human Rights. Its application in the environmental context has also been recognized in international instruments, in particular in principle 10 of the 1992 Rio Declaration on Environment and Development, which states that "effective access to judicial and administrative proceedings, including redress and remedy, shall be provided" (A/CONF.151/26 (Vol. I)). As noted above, article 50 of the Costa Rican Constitution provides not only that "every person has the right to a healthy and ecologically balanced environment" but also that every person is "therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused". The Constitutional Chamber of the Supreme Court has stressed that the right of participation in environmental matters is a fundamental, constitutionally protected right,[32] which includes the ability of community members to have access to court to seek remedies for violations of the right to a healthy and ecologically balanced environment.[33] Costa Rica has implemented that obligation in several ways, of which the following sections highlight three: (i) the jurisprudence of the Constitutional Chamber on legal standing; (ii) the flexible procedures of MINAE and of the Environmental Administrative Tribunal; and (iii) the general oversight capability of the Office of the Ombudsperson.

1. Constitutional Chamber of the Supreme Court

27. Article 48 of the Constitution provides for the remedy of amparo in order to maintain or re-establish the enjoyment of rights set out in the Constitution, as well as those of a fundamental nature established in international human rights treaties enforceable in Costa Rica. The amparo cause of action has been construed very broadly, to allow any person to file a case regarding a constitutional right without a lawyer, with no filing fees, in any language, at any time, on any day of the year and in any form, including handwritten notes.[34] Furthermore, in 1994, the Constitutional Chamber broadened the notion of legal standing further by establishing the principle of "intereses difusas" whereby individuals are allowed to bring actions on behalf of the public interest, including in the interest of environmental protection.[35]

28. Lowering the barriers to access for those claiming violations of constitutional rights in general, and for environmental rights in particular, is truly an exemplary practice and one that should be an inspiration to other States. It has enabled the people of Costa Rica to have easy access to the Constitutional Chamber, and they have responded. In 2012 alone, the Constitutional Chamber received 14,953 amparo petitions; it has received 68,537 petitions

[32] Decision No. 5593-12.

[33] Ibid.

[34] Law on the Constitutional Court, Title III.

[35] Constitutional Chamber Decision No. 503-94.

since 1989.[36] Some of the petitions are duplicative and can be considered together; nevertheless, the processing of so many petitions obviously represents a challenge for any tribunal. The Independent Expert was impressed with the Supreme Court's systematic method of organizing and considering the petitions so that they neither overwhelm the Court nor fail to receive proper attention.

29. Despite these successes, the Independent Expert was concerned to learn that the decisions of the Constitutional Chamber are not always met with compliance. While he sees that fiscal limitations may make compliance with some decisions difficult, compliance with the decisions of the highest court with jurisdiction over environmental matters is an important component of an environmental policy that fully respects human rights.

2. Ministry of the Environment and Energy and the Environmental Administrative Tribunal

30. As noted above, the principal environmental agency in Costa Rica is the Ministry of the Environment and Energy (MINAE). One innovative way that MINAE facilitates access to remedies is through an Internet platform on its website where individuals may register complaints of environmental problems.[37] The system automatically assigns each complaint an identification number, sends it to the relevant department for investigation and notifies the complainant of the result. The system is easily searchable for information about the nature and disposition of other complaints as well.

31. The Environmental Administrative Tribunal created by the Environment Act has jurisdiction to hear complaints for violations of all laws protecting the environment and natural resources (art. 111). The Tribunal can carry out on-site visits to determine the nature of environmental damage, and when it finds that a violation has occurred, it can impose fines and administrative sanctions for the elimination or mitigation of the damage caused. It can also take interim measures of protection according to the *in dubio pro natura* or precautionary principle (arts. 98, 99 and 108). The combination of these factors makes the Tribunal an effective mechanism to provide access to a wide range of remedies to individuals and communities threatened with environmental harm. The Tribunal has issued decisions suspending operations at pineapple-processing plants and pineapple plantations, for example, on the ground that they are not complying with applicable pollution standards.[38]

32. In addition to these traditional legal remedies, the Tribunal has adopted creative approaches to engage with various stakeholders in the field of environment protection. To increase awareness in the pineapple industry of unsound environmental practices, it developed a training and outreach programme that included scientific and legal instruction on the environmental impacts of pineapple processing as well as on the legal framework that compelled intervention by the Tribunal. The result was to build greater awareness of, and support for, the need to change practices in order to better protect the environment.

3. Office of the Ombudsperson

33. The Office of the Ombudsperson is an independent body of the Legislature, which has the general responsibility of protecting the rights and interests of Costa Ricans by

[36] See http://sitios.poder-judicial.go.cr/salaconstitucional/estadisticas.htm.

[37] Integrated System of Processing and Attention to Environmental Complaints (SITADA). Available from www.minae.go.cr/denuncias-publico/.

[38] The Economist Intelligence Unit, *Costa Rica: Environmental Law*. Available from http://country.eiu.com/article.aspx?articleid=211299405.

ensuring that the public sector meets standards set by the Constitution, statutes, conventions, treaties and general principles of law, as well as standards of morality and justice.[39] It has the authority to investigate, either on its own initiative or upon request, complaints of alleged human rights violations by public authorities through administrative acts or omissions in the exercise of administrative functions. The Ombudsperson can initiate judicial or administrative proceedings to address such violations and can also participate in the legislative process, including through participating in parliamentary debates and reviewing legislative proposals, in order to promote the human rights of citizens.[40]

34. Much of the work of the Ombudsperson in recent years has concerned environmental issues, including the constitutional right to a healthy and ecologically balanced environment. In 2011, of the 3,305 cases received by the Office of the Ombudsperson, 311 concerned the right to a healthy environment.[41] In approaching those cases, the main function of the Ombudsperson has been to promote the active participation of representatives of civil society and to monitor the performance of government institutions.[42]

C. Right to information

35. Article 19 of the Universal Declaration of Human Rights recognizes that the right to freedom of opinion and expression includes the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers," language that is echoed in article 19 of the International Covenant on Civil and Political Rights. Similarly, article 13, paragraph 1, of the American Convention on Human Rights provides that the right to freedom of thought and expression "includes freedom to seek, receive, and impart information and ideas of all kinds". The Inter-American Court of Human Rights has stated that:

> Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.[43]

Article 46 of the Costa Rican Constitution is particularly relevant in this respect: it provides that "consumers and users are entitled to the protection of their health, environment, safety and financial interests, *to receive adequate and truthful information*, to freedom of choice and to equal treatment" (emphasis added).[44]

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[39] Office of the Ombudsperson Act (Ley de la Defensoría de los Habitantes de la República) (No. 7319) 7 Nov. 1992, arts. 1 and 2. Available from www.dhr.go.cr/.

[40] Ibid., arts. 12 and 13.

[41] See http://dhr.opendata.junar.com/dashboards/7737/investigaciones-abiertas/.

[42] 2012–2013 Annual Report of the Ombudsperson, pp. 314 and 315. Available from www.dhr.go.cr/la_defensoria/informes.html.

[43] IACHR, Case of *Claude-Reyes et al. v. Chile*, Judgment of Sept. 19, 2006 (Merits, Reparations, and Costs), para. 77.

[44] English text of the Constitution available from www.wipo.int/wipolex/en/text.jsp?file_id=219959.

36. The significance of the right to information can apply with particular force in the environmental context because of the dangers posed to those unaware of potential environmental harm. Principle 10 of the Rio Declaration on Environment and Development states that "at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities". One important method of implementing the right to information about the environment is through environmental impact assessment (EIA). Principle 17 of the Rio Declaration states that "environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse effect on the environment and are subject to a decision of a national authority".

37. In Costa Rica, EIA is overseen by SETENA according to the Environment Act and the General Regulation on the Procedures of Environmental Impact Assessment (Executive Decree No. 31849-MINAE-SALUD-MOPT-MAG-MEIC).[45] The EIA process provides opportunities for public participation and access to environmental information. The public is entitled to be heard by SETENA at any stage of the evaluation process and the operational phase of the work or the project, and SETENA is required to address comments from stakeholders in its final assessment report (art. 22). Within five days following the receipt of an EIA from the proponent of a project, SETENA must forward an excerpt from it to the municipalities in whose jurisdiction the work, activity or project will take place, and also must disclose the EIA to the mass media (art. 22). The information contained in the record of the EIA will also be made public and available for consultation by any person or organization. The technical criteria and the weightings SETENA uses to analyse EIAs are required to be made public (art. 24).

38. The adoption of an effective EIA procedure is of fundamental importance, but it is not the only way in which Costa Rica and other countries can implement the right to information about environmental matters. The following sections describe two particularly innovative approaches Costa Rica has taken to this issue: (i) the State of the Nation report; and (ii) the certification process of its Tourism Board.

1. State of the Nation report

39. The State of the Nation Program was established in 1994 as a UNDP project, with support from the National Council of Public University Rectors (CONARE) and the Office of the Ombudsperson.[46] In 2003, it was restructured as an institutional programme under CONARE, in partnership with the Office of the Ombudsperson and the four public universities of Costa Rica. Since 1995, the State of the Nation Program has produced an annual report that serves as a performance monitoring system for Costa Rica, through the selection, measurement and evaluation of a wide range of components of sustainable human development. Its ground-breaking approach goes beyond conventional indicators, by employing innovative research tools such as a statistical compendium with more than 500 references. The report provides in-depth, independent analysis of challenges and successes in four general areas: social, economic, environmental and political. The drafters, who enjoy complete editorial freedom, rely on academic research and dialogues with diverse groups in public and private sectors and communities. The State of the Nation report is a

[45] Decreto Ejecutivo No. 31849-MINAE-SALUD-MOPT-MAG-MEIG, "Reglamento General sobre los procedimientos de Evaluación de Impacto Ambiental, EIA, de 28 de junio de 2004", p. 18. Available from www.setena.go.cr/normativa.html.

[46] Miguel Gutierrez Saxe, *National and Regional performance and accountability: "State of the Nation/Region Program – Costa Rica"*. Available from www.oecd.org/site/progresskorea/43586578.pdf.

good practice for its independent and regular reporting on developmental and environmental issues, and its dissemination of up-to-date and reliable information to support citizen participation in policymaking.

2. Certification for Sustainable Tourism

40. The Costa Rican Tourism Board (ICT) is an autonomous body under the Ministry of Tourism. Among other tasks, it administers the Certification for Sustainable Tourism (CST) programme, a voluntary points-based system created in 1998 to recognize enterprises' efforts towards environmentally friendly practices and business models. The programme differentiates businesses in the tourism sector according to the degree to which they comply with a sustainable model of natural, cultural and social resource management.[47] Participation in the programme is voluntary. ICT evaluates each participating business according to criteria concerning the relationship of the company not only with the natural environment, but also with its clients and its surrounding community. On the basis of the evaluation, the company is assigned a "sustainability level" rating. ICT conducts regular reassessments of the rating, with the aim of helping the business improve its performance. As the rating improves, the CST programme provides for greater national and international publicity, among other benefits.

41. It may not be immediately obvious that a certification programme designed to encourage sustainable tourism is a good practice in the implementation of the right to information, but the programme is an innovative way to provide information to consumers about the degree to which certain businesses are complying with or exceeding environmental standards. As a result, the consumers are able to choose tourism options in the light of greater knowledge about the environmental consequences of their choice. Businesses are encouraged to improve their environmental performance. Higher-performing businesses are rewarded with higher rankings and, in turn, with greater attractiveness to those looking for sustainable choices in their travel in and to Costa Rica. The benefits are felt by surrounding communities in economic as well as environmental terms. Indeed, according to a recent study of ecotourism in Costa Rica, the economic benefits from offering a range of "green services" around ecotourism may even include a reduction of poverty rates in the areas with eco-friendly tourism projects.[48]

V. Issues of concern

42. The following list is not intended to identify all issues of environmental concern. Rather, it focuses on three issues that particularly implicate human rights, as they were raised during the visit: (a) the rights of people living in and near protected areas; (b) the potential conflicts between the development of a hydroelectric project and the rights of indigenous people; and (c) threats to environmental human rights defenders. In addition, the Independent Expert followed up on the recommendations made by the Independent Expert

[47] See www.turismo-sostenible.co.cr/en. In addition, ICT has a certification programme for coastal communities called the Blue Flag Ecological Program (Bandera Azul Ecológica), which was established in 1996 and currently involves some 2,200 communities. The Bandera Azul certification is granted to communities that exceed standards in specific areas, including ocean water quality, quality of potable water, quality of coastal sanitation, and environmental education. See www.visitcostarica.com/ict/paginas/mapas/areasurf.asp.

[48] United Nations Environment Programme/World Tourism Organization, "Tourism: Investing in energy and resource efficiency" in *Towards a green economy*, p. 425 (UNEP 2011). Available from www.unep.org/resourceefficiency/Portals/24147/scp/business/tourism/greeneconomy_tourism.pdf.

on the issue of human rights obligations related to access to safe drinking water and sanitation during her visit to Costa Rica in 2009.

A. Rights of people living in and near protected areas

43. As noted above, more than one quarter of the territory of Costa Rica is included in its system of protected areas. This commitment to conservation has many benefits, but it also requires Costa Rica to consider how best to reconcile its interest in preventing environmental degradation of those areas with the interests of the people who continue to live in and near them.

44. At its best, the relationship between those who live in and near protected areas and the government agencies responsible for administering them should be, and has been, one of mutual support. Representatives of civil society uniformly expressed to the Independent Expert their strong support for the protection of the environment and their firm belief that, given the opportunity, Costa Ricans want to participate actively in efforts to protect it. When the Independent Expert met with citizens in the Bijagual community, for example, he was impressed not only by their commitment to sustainable living, but also by their willingness to help monitor environmental threats and illegal conduct in the neighbouring protected areas.[49] However, they expressed concern that their efforts to notify the Government of potential problems were not always met with due attention, and that government surveillance of the protected areas seemed to be declining.

45. Even more troubling than failures to take advantage of local interest in helping to support environmental protection are instances of conflicts between policies promoting conservation, on the one hand, and the rights of those living in protected areas, on the other. During his visit, the Independent Expert learned of several such conflicts, including in particular one arising from a strict interpretation of laws banning structures within a certain distance from the coast. As a result of the interpretation, some long-standing buildings, including hotels, along the Caribbean coast had been destroyed, and entire communities were being put at risk of expulsion from places where they had lived for generations.

46. The affected communities are predominantly of Afro-Caribbean origin, a minority group in Costa Rica that has traditionally been somewhat isolated from the majority culture. Understandably, members of these communities feel that the strict interpretation of the law fails to take into account their rights and interests, and even reflects a degree of invidious discrimination against them. Everyone with whom the Independent Expert spoke about the issue, inside and outside the Government, recognized that this situation, as well as others involving similar conflicts elsewhere in Costa Rica, needs to be resolved in a way that respects the rights of those whose history in these places goes back generations. In September 2012, the Legislative Assembly passed a two-year moratorium on the eviction of coastal communities living in protected areas, in the hope that it would be possible to find a permanent solution to the problem before the moratorium expires. At the time of writing the present report, however, Costa Rica had not been able to find such a solution.

[49] The community demonstrated small-scale greenhouse projects where they grow pesticide-free vegetables and herbs, which they hope to sell at nearby tourist resorts. The Independent Expert also learned of other communities in Costa Rica that have embraced sustainable living practices, including one community in Pococí, Limón, which is virtually carbon-neutral.

B. Hydroelectric projects and indigenous peoples

47. As part of its effort to rely on renewable energy, Costa Rica has established a system of hydroelectric plants. The Costa Rican Electricity Institute (Instituto Costarricense de Electricidad, or ICE), the State-owned electric utility company, has proposed a new hydroelectric dam and plant on the Río Grande de Térraba, in the south-east of the country, for the purposes of large-scale electricity generation. As explained in the 2011 report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of the indigenous peoples affected by the El Diquís hydroelectric project in Costa Rica, the project would affect indigenous and non-indigenous communities. As he indicated, the reservoir and part of the dam would cover about 10 per cent of the territory of the indigenous Teribe people, and the reservoir would also flood a portion of the China Kichá indigenous territory of the Cabecar people. Furthermore, the Rey Curré and Boruca indigenous territories, which belong to the Brunca people, are located downstream of the proposed dam and therefore could be affected by changes in the course of the river. The project could also affect indigenous areas upstream, including the Cabagra and Salitre indigenous territories of the Bribri people, the Ujarrás territory of the Cabecar people, and the Coto Brus territory of the Ngobe people. The project would also displace, in whole or part, a number of non-indigenous communities (A/HRC/18/35/Add.8, para. 2).

48. The indigenous communities opposed the project, arguing that the Government had not adequately consulted them before moving forward with the design and development of the project. In 2011, the Government of Costa Rica invited the Special Rapporteur on the rights of indigenous peoples to visit the country to assist in the resolution of the conflict. In his subsequent report, the Special Rapporteur emphasized that "all parties agree on the need to undertake consultations with the indigenous peoples of the territories affected by the project before it is approved, and that the consultation process should be consistent with international standards" (ibid., para. 11). To that end, he made a number of recommendations designed to ensure adequate consultation with the affected indigenous peoples. He underlined that "according to the applicable international instruments, consultation with indigenous peoples who may be affected by the El Diquís hydroelectric project should be undertaken with the goal of obtaining their free, prior and informed consent" (ibid., para. 14). The Special Rapporteur emphasized that the consent should be "explicitly framed in an agreement or agreements which contain commitments by the Government or ICE" and that the agreements "must take into account all the rights affected by the project in relation to each of the indigenous peoples affected, including their rights to land and natural resources, any rights that could underpin claims for compensation, any mitigation measures and sharing the project's profits" (ibid., para. 14). He urged the State to allow time for the indigenous peoples to decide on their representation, and to take steps that would allow them to recover the land in their territories that is being occupied by non-indigenous individuals (ibid., paras. 33 and 44).

49. During his visit, the Independent Expert followed up on those recommendations. He was advised that the Government had set up a permanent round table to bring together indigenous leaders and government authorities to seek a dialogued resolution. The United Nations country team has played a mediatory role during the confrontations that still occasionally occur between the indigenous and non-indigenous groups over the land tenure issue. The Independent Expert was advised that there had been significant developments in the discourse, including reports from the Government of progress on resolving the issue of land tenure, the preparation of development plans for the indigenous territories and the establishment of a monthly permanent round table. He understood further that efforts were under way to articulate substitutes for the prevailing modality of representation of the indigenous communities, which many consider inadequate and not in consonance with traditional indigenous customs. The Independent Expert encourages the United Nations

presence in Costa Rica to continue the critical bridging role it plays aimed at fostering the trust and transparency that are essential for consensus on key issues.

50. The Independent Expert met with officials from ICE, who told him that as a result of the separate dialogue with indigenous peoples, communities potentially affected by the proposal were being treated differently. ICE was continuing to meet with non-indigenous communities as part of its EIA process, but was not meeting with indigenous communities, as a separate consultation with them was continuing. The Independent Expert made it clear that, while he understood the concern that rights such as the constitutional right to a healthy environment should be applied consistently, indigenous peoples have special protections under human rights law precisely because their rights are more often vulnerable to violation. As the Inter-American Commission on Human Rights has indicated, "within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population".[50] Their special vulnerability stems from their historical, cultural and physical dependence on access to their traditional lands and the use and enjoyment of the natural resources on those lands. As a result, the Inter-American Court of Human Rights has held that States must consult with communities regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is issued without a prior assessment of its environmental and social impacts, and guarantee that the community receives a reasonable benefit from any such plan if approved. With respect to "large-scale development or investment projects that would have a major impact", the State must do more than consult; it must obtain the community's "free, prior, and informed consent in accordance with their customs and traditions".[51]

51. ICE also shared some of the challenges it faces in translating complex scientific and technical information in the EIA process into lay terms, and into different languages when required. It stated that there is a need both for guidelines for effective consultation that are more clearly understood by all stakeholders and for more resources to support experts in making scientific and technical information intelligible to the people affected by projects.

C. Environmental human rights defenders

52. The rights of human rights defenders include rights to meet peacefully to protect and promote human rights, and to disseminate information about human rights and draw attention to whether they are observed in practice.[52] These rights apply no less to human rights defenders seeking to protect a right to a healthy and ecologically balanced environment and other rights related to environmental protection than they do with respect to human rights defenders seeking to protect other human rights.

53. In many countries around the world, environmental human rights defenders face heightened risks when they try to exercise these rights. In her 2011 report to the Human Rights Council, the Special Rapporteur on the situation of human rights defenders reported that she received many communications concerning environmental activists, "including those working on issues related to extractive industries, and construction and development

[50] Report on the Situation of Human Rights in Ecuador, chap. IX, "Human rights issues of special relevance to the indigenous inhabitants of the country". Available from www.cidh.oas.org/countryrep/ecuador-eng/chaper-9.htm.

[51] IACHR, *Case of the Saramaka People v. Suriname*, Judgment of Aug. 12, 2008 (Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs), (Series C No. 185), para. 17.

[52] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 5, 6 and 8.

projects; those working for the rights of indigenous and minority communities; women human rights defenders; and journalists" (A/HRC/19/55, para. 64). Environmental rights defenders face a high risk of killings, attacks, assault, threats and intimidation from both State and non-State actors (paras. 64–92). In her recent report to the General Assembly, she stated that the situation of defenders working on land rights and natural resources issues seemed to have worsened in the past five years (A/68/262, para. 17). States therefore have a particularly urgent responsibility to take steps to protect environmental human rights defenders and to investigate and respond to threats or acts of violence against them.

54. On 31 May 2013, Jairo Mora Sandoval, a volunteer with the non-profit environmental group Widecast, was killed on Moín beach near the city of Limón, on the Atlantic coast. He had been working to protect sea turtle nests from poachers, who take eggs in order to trade them on the black market. Sea turtles are among the world's most endangered species and poaching is one of the greatest threats they face. An investigative report by *The Tico Times* suggested that poachers had become more aggressive in 2013, threatening Mora and other members of his organization with violence should they continue to try to protect the turtles.[53] The police regularly patrolled the beach, although Mora and others complained that they still felt unsafe and wanted more police protection. On 31 July 2013, Costa Rican police arrested several individuals suspected of having participated in Mora's murder.[54] After his death, environmentalists met with MINAE to urge the Government not only to punish those responsible for his death, but also to adopt greater criminal penalties for poaching and step up enforcement in Limón. They discussed a suggestion, to which MINAE agreed, to set up a memorial in Mora's name. Environmentalists also requested that a truth commission be established to investigate and examine threats and acts of violence against environmentalists over the previous two decades. In addition to the death of Jairo Mora, their proposal identified eight other murders from the late 1980s to 2011. The commission would examine those cases and other situations of threatened or actual violence, determine whether existing mechanisms of protection were sufficient, and recommend other actions necessary to improve the security of environmental rights defenders. The Government had not accepted the proposal at the time of writing of the present report.

55. The death of Jairo Mora is a tragic reminder that Costa Rica, like many other countries, faces increased criminal activity by narco-traffickers and poachers in its protected areas and other environmentally sensitive areas. That activity strains government and civil society efforts to protect the environment. During the visit of the Independent Expert, SINAC officials indicated that the department is aware of the challenges it faces in policing large protected areas against increasingly well-armed criminals. Although it is under resource constraints, it hopes to enhance collaboration with the Ministry of Public Safety. The Independent Expert stressed the need to strengthen protection and monitoring by the State in protected areas and other environmentally sensitive areas, where increasingly vulnerable social and community organizations and citizens have started their own surveillance of environmental issues and thus are exposed to harm. He emphasized that those policing functions are the duty of the State and it is not the task of civilians to put their lives at extraordinary risk.

56. Although civil society should not be expected to police criminal activity, individuals and groups do have the right to engage in actions designed to increase public awareness and influence environmental decision-making, including education, activism and even, in some cases, social protest. The Independent Expert encourages the Government, wherever

[53] Lindsay Fendt, "Why Jairo died", *The Tico Times*, 2 Sept. 2013. Available from www.ticotimes.net/More-news/News-Briefs/Why-Jairo-died_Tuesday-September-03-2013.

[54] Ibid.

possible, to see the positions advocated and activities undertaken by environmental advocates in regard to large-scale development projects not as criminal behaviour, but rather, as the Special Rapporteur on human rights defenders has put it, as expressions of support for a sustainable model of development that is people-centred, non-discriminatory, participatory and transparent (A/68/262, para. 37).

57. Taking actions aimed at protecting the environment may often put individuals at increased risk from other private actors. While no Government is obligated to ensure an absolutely secure environment for its citizens under all situations, States are obligated, in the words of the Inter-American Commission on Human Rights, "to take reasonable measures to prevent the threats, assaults and harassment of human rights defenders; conduct serious investigations of the facts brought to their attention; and, where appropriate, punish those responsible and adequately redress the victim".[55] It is clear that the Government of Costa Rica took seriously its obligation to investigate the death of Jairo Mora. The Independent Expert is concerned, however, that the Government has responded to individual threats and acts of violence against environmentalists only on a case-by-case, post hoc basis. It is important to recognize that such situations can be part of a broader pattern and to examine the characteristics of that pattern, in order to fulfil the obligation "to take reasonable measures to *prevent* the threats, assaults and harassment" (emphasis added)[60] before they take place. The Independent Expert understands that the Government believes that initiatives such as truth commissions are unnecessary in a State with a strong judiciary, such as that of Costa Rica. However, even the best judiciary is limited to hearing the cases brought before it; it does not generally have the authority to study patterns of threats and acts of violence over a long period and to make recommendations in response to them, as independent commissions of inquiry do.

D. Right to water and sanitation

58. In the report on her 2009 visit to Costa Rica, the then Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation observed that the country's Water Act, which was enacted in 1942 when Costa Rica had a population of only 500,000, "no longer corresponds to the social and economic situation of the country, and needs to be urgently revised and updated" (A/HRC/12/24/Add.1, para. 61 and A/HRC/12/24/Add.1/Corr.1). She identified several problems, including the overlapping and potentially conflicting responsibilities of government agencies, a lack of sufficient technical and financial resources, and serious disparities regarding access to safe drinking water. She made a number of recommendations, including that Costa Rica move expeditiously towards the adoption of a new water law that, inter alia, expressly recognizes that access to water constitutes a fundamental human right, adopt appropriate mechanisms to ensure that water facilities are accessible to all without discrimination on prohibited grounds, and incorporate measures to improve and monitor the quality of potable water (A/HRC/12/24/Add.1, para. 75). She also recommended that Costa Rica "undertake a comprehensive review of its normative framework on sanitation … with a view to ensuring the establishment of a coherent and comprehensive system for the collection, management, treatment and disposal of human excreta and wastewater" (para. 77) and "to take all appropriate measures to reduce the disparities ... with regard to access to safe drinking water" (para. 82).

[55] Inter-American Commission for Human Rights, *Second Report of the Situation of Human Rights Defenders in the Americas*, para. 320. Available from www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf.

59. Four years later, some progress has been made. Approximately 98 per cent of the population now receive water in their homes, an improvement from 94.3 per cent in 2007, and 90.1 per cent have access to water of potable quality, an improvement from an estimated 82 per cent in 2007.[56] Other areas, however, are more troubling. Perhaps most notable is the fact that Costa Rica has yet to adopt a revised Water Act. Moreover, many of the issues identified in 2009 continue to require further attention. The State of the Nation report indicates that water demand is exerting significant pressure on water sources, including the underground aquifers on which agriculture and industry largely depend.[57] Many Costa Ricans continue to lack adequate sanitation facilities, which results in the increased contamination of water resources. Only 20.5 per cent of Costa Ricans have access to a sewage system, while over 75 per cent use septic tanks.[58] Most rivers in the country are used as receptors of sewage[59] and less than 1 per cent of the sewage from the San José metropolitan area, the most populous in the country, is treated before being discharged into rivers.[60]

60. Besides sewage, pollutants such as pesticide residues, organic compounds and heavy metals threaten coastal waters as well as superficial and underground water bodies.[61] According to a 2011 study by the World Resources Institute, Costa Rica has the highest per capita use of pesticides in the world.[62] Recent studies have described how the use of pesticides for agricultural purposes is adversely affecting river ecosystems, including by causing deterioration in the habitat and ecological quality of macroinvertebrate communities, poor plant growth, and high levels of fungicide and herbicide residue levels.[63] As a result, Costa Rica has some of the most polluted rivers in Latin America.[64] Its wetlands also need greater protection.

VI. Conclusions and recommendations

61. **Costa Rica is a leading example of how attention to human rights in the environmental context can lead to stronger environmental protection and sustainable development. Good practices in Costa Rica include:**

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[56] The current numbers are reported in the Estado de la Nación report, p. 192. The 2007 data are taken from the 2009 report of the Independent Expert (A/HRC/12/24/Add.1), paras. 35 and 36.

[57] Estado de la Nacion, p. 193.

[58] Ibid., p. 195.

[59] Ibid., p. 194.

[60] Ibid., p. 179.

[61] Ibid., p. 194.

[62] "U.S. will support Costa Rica in use of reduced-risk pesticides", *Inside Costa Rica*, 21 Nov. 2013. Available from http://insidecostarica.com/2013/11/21/u-s-will-support-costa-rica-use-reduced-risk-pesticides/. The article notes that Costa Rica has recently signed a technical memorandum of understanding with the United States of America to support a move to use pesticides with less risk to the environment.

[63] S. Echeverría-Sáenz et al., "Environmental hazards of pesticides from pineapple crop production in the Río Jiménez watershed (Caribbean Coast, Costa Rica)". Available from www.ncbi.nlm.nih.gov/pubmed/23040047; and Paul B. C. Grant and others, "Pesticides in blood from spectacled caiman (*Caiman crocodilus*) downstream of banana plantations in Costa Rica", *Environmental Toxicology and Chemistry*, vol. 32, No. 11, (Nov. 2013), pp. 2576–2583.

[64] Instituto Costarricense de Acueductos y Alcantarillados, Laboratorio Nacional de Aguas, *Calidad Sanitaria de las Aguas de Playa de Costa Rica Periodo 1996–2011*, Marzo 2012. Available from www.bvs.sa.cr/AMBIENTE/textos/ambiente10.pdf.

(a) The adoption of a constitutional right to a healthy and ecologically balanced environment and the active implementation of that right through legislation and judicial enforcement;

(b) The fulfilment of the right to access to legal remedies, by broadening citizen standing before the Constitutional Chamber of the Supreme Court, facilitating effective resolution of claims brought to the environmental ministry and its administrative tribunal, and bringing the resources of an independent ombudsperson to bear on environmental issues;

(c) The adoption of innovative and effective methods of providing information about environmental matters, including through the authoritative, comprehensive State of the Nation report and through the use of certification of businesses in the tourism industry that meet detailed criteria for environmental and social performance.

The Independent Expert encourages all States to give serious consideration to whether these good practices could make sense for them as well. He also recommends that Costa Rica share information about these practices with other States. He applauds its current efforts in that direction, including its willingness to provide information about its tourism certification system to other countries.

62. **Costa Rica should also consider promoting these practices in international and regional forums, as it is doing through the talks on a regional agreement to implement rights of access to information, decision-making and remedies that are currently taking place under the auspices of the Economic Commission for Latin America and the Caribbean.**

63. **Although Costa Rica has a strong record of protecting and promoting environmentally related human rights, it does face several challenges. First, it is highly troubling that communities, including minority communities, are being threatened with expulsion from homes that they have occupied for generations, as a result of strict interpretations of laws governing protected areas. Conservation should not impose an undue cost on communities that have deep historical roots in areas of environmental importance. The right to a healthy environment need not conflict with other fundamental rights. The Independent Expert therefore recommends that Costa Rica move with greater expedition to resolve this situation before the expiration in 2014 of the two-year moratorium on the eviction of coastal communities living in protected areas, in a manner that:**

(a) Safeguards both the right to a healthy and ecologically balanced environment and the rights of those who have lived in and near the protected areas for many years;

(b) Takes into account that many of those affected are members of minority groups that have been historically on the margins of Costa Rican political life, and ensures that the resolution of the situation is free from discrimination on any prohibited grounds;

(c) Does not regard the absence of formal legal title as necessarily dispositive, in the light of the fact that rights may arise in relation to long-occupied property even in the absence of such title;[65]

[65] See also *Yordanova and Others v Bulgaria*, European Court of Human Rights (24 Sept. 2012), for an example from another jurisdiction. The Court held that forced removal of Roma from their homes violated article 8 of the European Convention, even though they did not have title to the property.

(d) Provides for the full and informed participation of those affected in the process of reaching a resolution.

64. **Second, with respect to all of its citizens, the Independent Expert recommends that Costa Rica continue to build on its efforts to engage those individuals and communities that are most directly concerned with the protection of particular areas in order to draw on their abilities and interests. Perhaps its greatest strength in relation to human rights and the environment is the broad-based commitment of its people to environmental protection and sustainable development.**

65. **Third, with respect to the El Diquís hydroelectric project, the Independent Expert recommends that the State continue to engage in consultations with the indigenous peoples that may be affected, taking advantage of the facilitation of the United Nations country team and bearing in mind that the consultation should be undertaken with the goal of obtaining the free, prior and informed consent of the indigenous peoples affected.**

66. **Fourth, the Independent Expert recommends that Costa Rica develop clearer guidelines for effective consultation with all stakeholders in respect of such projects, and that it provide the resources necessary to help the Electricity Institute translate complex scientific and technical information into language that is easily accessible and comprehensible to non-experts.**

67. **Fifth, with respect to the risk of harassment and violence directed against environmental human rights defenders, the Independent Expert recommends that Costa Rica strengthen further its efforts not only to respond to threats and acts of violence, but also to prevent the situations that lead to such problems. He suggests that Costa Rica seriously consider establishing a commission or equivalent body, with representatives from a range of stakeholders, which would have a mandate to examine the history and current situation of environmental human rights defenders in Costa Rica and to make recommendations about how best to improve their protection. Such an initiative could be a model for many other States of how to address this issue. It would also further demonstrate the country's willingness to take innovative steps towards the protection of environmental human rights.**

68. **Sixth, the Independent Expert recommends that the Government not treat social protests against large-scale development projects as criminal behaviour, but rather as expressions of the human rights to freedom of expression and association, in accordance with the recommendations of the Special Rapporteur on the situation of human rights defenders (see A/68/262).**

69. **Seventh, the Independent Expert recommends that Costa Rica revisit the 2009 recommendations of the then Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, with a view to renewing efforts to meet those recommendations, including through the adoption of a revised water law and through greater attention to the need for sanitation facilities.**

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